

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) No.: 16-cr-10305-NMG
)
)
MARTIN GOTTESFELD,)
)
)
Defendant.)

**GOVERNMENT'S SUPPLEMENTAL BRIEF REGARDING ADMISSION OF
CERTAIN EVIDENCE REFERENCING "DOXING"**

In light of the Court's provisional ruling on defendant's motion to exclude evidence regarding doxing (Dkt. No. 227), the government has redacted Gottesfeld's several statements about doxing unidentified individuals in two summary exhibits. In addition, it is removing Gottesfeld's admission in a recorded jail call that he openly doxed the state court judge involved in the Pelletier matter. At the Court's request, we are submitting briefing on four exhibits (Exhs, 60, 120, 121, and 97E) that specifically reference the doxing of the victims of the charged offense. Copies of the proposed exhibits 60, 121, and 97E are attached hereto. A copy of exhibit 120 (a short video) has been provided on a disk to the Court. We have discussed these exhibits with Attorney Grimaldi, but have been unable to reach a resolution regarding their admissibility.

The legal standards for admissibility of evidence intrinsic to the charged conspiracy and, alternatively, under Fed. R. Evid. 404(b), were set forth in the government's motion in limine regarding other network attacks and doxing (Dkt. No 217). That legal framework is not repeated herein. By this supplemental filing, the government instead intends to clarify what these four exhibits are, and how they relate to each other and to the charged offenses.

All four exhibits are foundational proof of the charged offenses. The defendant himself posted three of them during the course of the conspiracy charged in Count One of the Indictment. As described below, they provide a necessary foundation for the testimony of witnesses from Wayside Youth & Family Services and the Boston Children's Hospital regarding these institutions' responses to Gottesfeld's attacks on their networks. Several witnesses who will testify at trial saw the content of these exhibits in real time before and during the 2014 attacks, and refer to these exhibits in explaining the steps that Wayside and the Boston Children's Hospital took in response to those attacks. Only one of the exhibits (Exh. 60) actually contains personally identifiable information. The government believes that Exhibits 120, 121, and 97E should therefore be admitted at trial in their entirety, and Exhibit 60 should be admitted with only the personally identifiable information redacted.

As the Court is aware, the Indictment alleges that Gottesfeld and co-conspirators "launched disruptive attacks on the computer networks of Wayside and [Boston] Children's Hospital" in an effort to "punish" these entities and "to pressure these institutions to end their involvement in" the treatment of Justina Pelletier. Dkt. No. 28 at ¶ 17. The Indictment further alleges that Gottesfeld launched the attacks on the Children's Hospital network under the banner of the hacking collective Anonymous, in an operation he referred to as "OpJustina."

The attack was multi-faceted. The government will offer evidence at trial that Gottesfeld caused a distributed denial of service ("DDOS") attack directed at the Children's Hospital network. During the DDOS attack, and particularly just after Gottesfeld's April 19, 2014 threat via Twitter (Exh. 97E described below), Children's Hospital witnesses saw evidence of attempts to penetrate its network in an effort to obtain access to patient information, among other data.

Exhibit 60: The March 20, 2014 Anonymous Statement at Pastebin.com

On March 20, 2014, the hacking collective Anonymous posted a statement on the internet (specifically the website pastebin.com).¹ The statement called for Pelletier's release from DCF's care and custody. (Exh. 60). Gottesfeld discussed the statement with co-conspirator DigitaGhost shortly after it was posted. (Exh. 42) (DigitaGhost: "Thinking of video transcribing the pastebin message." Gottesfeld: "Cool").

In the Pastebin post, Anonymous demanded that the Boston Children's hospital fire a doctor allegedly involved in the treatment of Justina Pelletier, and "return [Justina] home to her family." The post provided Children's Hospital's street address, along with the IP address for the hospital's public internet page (www.childrenshospital.org) and technical information regarding the software running on the hospital's public-facing web server. The IP address identified in the statement was the IP address that Gottesfeld and others later attacked. Anonymous informed the Boston Children's Hospital in the post: "This will be your first and final warning. Failure to comply will result in retaliation which you will not be able to withstand."

The March 20th Pastebin post also included the name, address, and telephone number of both the state court judge handling Pelletier's case and of a Boston Children's Hospital doctor reportedly involved in Pelletier's care. The Pastebin post advocated:

- (1) contacting the state court judge directly using the personal information in the posting ("To the American people[,] Anonymous implores you to use this information to your maximum potential in order to save Justina. Call his home and demand answers, mail

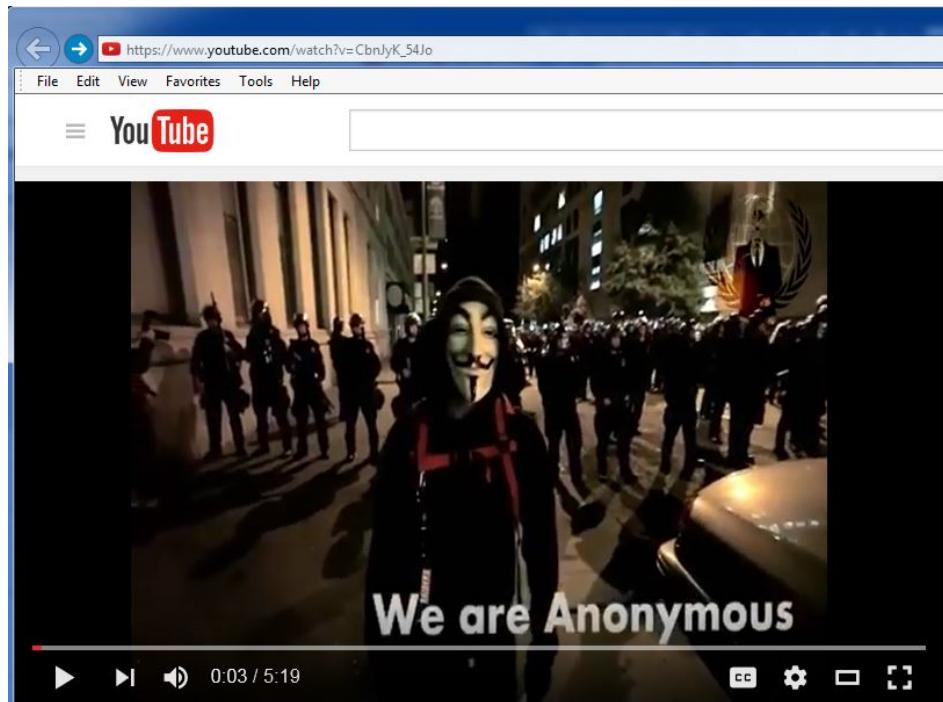
¹ Pastebin.com is a forum in which anyone can post plain text information for public viewing and provide a web address for viewers to access the information.

letters to his home telling him that you will not stand for this attack upon the innocent . . ."); and

- (2) contacting the Children's Hospital doctor using the personal information provided in the posting ("Our fellow Americans we also call upon you to use this information to your fullest to make her see that you as a people will not take this clear abuse of power.).

Exhibits 120 & 121: Gottesfeld's Posting of YouTube Video Reflecting March 20th Anonymous Pastebin Statement

On March 23, 2014, from his Somerville apartment, Gottesfeld posted a five-minute video (Exh. 121) to his Shutdown Logan River Academy YouTube channel (Exh. 120) under the hashtag #opjustina. The video's narration was largely the text of the above-described Anonymous post from March 20, 2014 (Exh. 60). The video narration did not include the personal information of the doctor or the judge. The video, however, contained the web address for the original Pastebin post from March 20th that Gottesfeld and DigitaGhost discussed. Gottesfeld also directed viewers to the March 20th Pastebin post in text he wrote below where the video appears on his YouTube channel, a screenshot of which is shown below (Exh. 120).



The screenshot shows a YouTube video player. The video frame displays a night-time protest scene. In the foreground, a person wearing a Guy Fawkes mask and a black hoodie with red stripes is facing the camera. Behind them, a line of police officers in dark uniforms stands on a city street. To the right, there's a flag with a crest. Overlaid on the bottom of the video frame is the text "We are Anonymous". Below the video player, the YouTube interface shows the title "Anonymous #OpJustina Press Release Video", the channel name "Shutdown Logan River Academy", a "Subscribe" button with 69 subscribers, and a view count of 20,052. It also shows standard YouTube interaction buttons for adding to a list, sharing, and more, along with like and dislike counts of 119 and 6 respectively.

Published on Mar 23, 2014
D0x with Judge & Dr. Contact: <http://pastebin.com/tfew3Hn6>
Please see: <https://www.shutdownloganriver.com/tw...> & <http://www.justiceforjustina.com>

Category News & Politics
License Standard YouTube License
Music "Beyond the Pale" by Frances Shelley Listen ad-free with YouTube Red

SHOW LESS

As shown above, the video was published on March 23, 2014 and contained the following descriptive text from Gottesfeld: “D0x with Judge & Dr. Contact: <http://pastebin.com/tfew3Hn6>.” That web address is the location of the March 20, 2014 Anonymous statement on Pastebin (Exh. 60) containing information regarding the Children’s Hospital web server and information regarding the judge and doctor involved in the matter.

Exhibit 97E: Gottesfeld's April 19, 2014 Tweet From the AnonMercurial Twitter Account

On Sunday, April 13, 2014, in the middle of the night, Boston Children's Hospital began to experience increased traffic to the IP address referenced in the Anonymous Pastebin post and in the video that Gottesfeld posted on YouTube on March 23. The traffic more than doubled typical weekday visits to the hospital's website, even though it was late at night on a Sunday.

The attack lasted more than two weeks. During the first week of the attack, the hospital made changes to defend its network, but Gottesfeld and his coconspirators ramped up the amount of traffic to the point where it had overwhelmed the hospital's ability to process Internet traffic through its firewall. All of the hospital's Internet-connected services were affected. The attack continued to increase in intensity.

On April 19, 2014, near the end of the first week of the ongoing DDOS attack, Gottesfeld tweeted at the Boston Children's Hospital from his "AnonMercurial" Twitter account. The tweet (Exh. 97E) is shown below.

Anon Mercurial
@AnonMercurial

@BostonChildrens Website Troubles? We Are #Anonymous. #FreeJustinaNOW or d0xes of your staff are next. HIPAA breach thereafter. Test us.

FAVORITE 1

7:46 PM - 19 Apr 2014

In this tweet, Gottesfeld was commenting directly on the ongoing DDOS attack ("Website Troubles?"); claiming responsibility for the attack as a member of and on behalf of Anonymous ("We Are #Anonymous"); and threatening to escalate the attack through

penetrating the network unless his/Anonymous demands were met (“#FreeJustinaNOW or d0xes of your staff are next. HIPAA breach thereafter. Test us.”). Consistent with Gottesfeld’s threats, the hospital’s network then began experiencing a significant increase in DDOS traffic and persistent attempts to penetrate its network, including “phishing” attacks sent by e-mail to the hospital’s mail servers. Although hospital administrators did not know who was attacking their network at the time, they were keenly aware of Anonymous’ reputation as a hacking collective, and saw in Gottesfeld’s Tweet, the March 20, 2014 Pastebin post, and Gottesfeld’s YouTube video (Exs 120, 121) a serious threat to the integrity of the hospital’s network. In the hospital’s view, the doxing and HIPPA threats were interrelated; in the context of an ongoing attack, the hospital feared that personal information for its staff could be obtained through a network breach. The same was true for the “HIPAA breach” threat. It was then that they decided to take down the hospital’s public-facing website, to disable websites that patients and providers used to access hospital records and services, and to disable its e-mail network (so as to be able to scan for emails containing viruses). The previous doxing of the state judge and the Children’s Hospital doctor (via the Pastebin post and promoted in the video that Gottesfeld posted) only reinforced the hospitals’ concern that its patient and employee information was credibly at risk. The ramped-up attack stretched the resources of the hospital’s IT staff, requiring it to retain consultants and other service providers, both to mitigate the increased network traffic caused by the DDOS attack and to defend against the efforts to penetrate its network.

In sum, these four exhibits are qualitatively different than the many other references to doxing and the harassment of individuals (mostly unidentified) in connection with OpJustina or Gottesfeld’s campaign to shutdown Logan River Academy (all of which the government has removed in light of the Court’s holding and in an effort to streamline the presentation of

evidence). These exhibits are highly probative; they are inextricably intertwined with the charged conduct; and they are not unfairly prejudicial. Accordingly, they should be admitted at trial. Moreover, even if not intrinsic evidence, the particular reference to doxing in three of these four of exhibits is admissible under Fed. R. Evid. 404(b) as relevant to “motive . . . intent, preparation, plan, knowledge, [and] identity.” Specifically with respect to identity and attribution, the relationship between these exhibits, as described above, is relevant to proving that Gottesfeld, who admitted he controlled the Shutdown Logan River YouTube channel, is “AnonMercurial”—i.e., the person who posted the April 19th Tweet threatening doxing Children’s Hospital staff and obtaining HIPPA information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ David J. D'Addio

Dated: July 18, 2018